

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

CITY OF O'FALLON, ILLINOIS, ) DOCKET NO.  
an Illinois Municipal Corporation, ) T11-0132  
Petitioner, )  
v. )  
CSX TRANSPORTATION, INC., a )  
Virginia Corporation, and STATE OF )  
ILLINOIS, ILLINOIS DEPARTMENT OF )  
TRANSPORTATION, )  
Respondents. )  
)  
Petition for an Order granting )  
authority to construct a new grade )  
separation structure, and to close )  
permanently an at-grade crossing. )

Springfield, Illinois  
Monday, May 8, 2012

Met, pursuant to notice, at 2:00 p.m.

**BEFORE:**

MR. TIMOTHY E. DUGGAN, Administrative Law Judge

**APPEARANCES :**

MR. JOHN P. LONG  
BELSHEIM & BRUCKERT, L.L.C.  
1002 East Wesley Drive, Suite 100  
O'Fallon, Illinois 62269  
Ph. (618) 624-4221

(Appearing on behalf of  
Petitioner)

SULLIVAN REPORTING COMPANY, by  
Carla J. Boehl, Reporter  
CSR #084-002710



1	<u>I N D E X</u>				
2					
3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	JOHN SCHALLER				
5	By ALJ Duggan	142		145	
6	By Mr. Long		144		
7	By Mr. Toliver		147		
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11					
12					
13		<u>EXHIBITS</u>			
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1       (312) 236-5015.

2               JUDGE DUGGAN:   Okay.   Mr. Toliver?

3               MR. TOLIVER:   Aaron Toliver, T-O-L-I-V-E-R,  
4   representing Staff of the Commerce Commission, Rail  
5   Safety Section, 527 East Capitol Avenue, Springfield,  
6   Illinois 62701, office phone is 785-8420.

7               JUDGE DUGGAN:   Thank you.   Everybody has been  
8   previously sworn in, is that right?

9               MR. LONG:   Except Mr. Bowen (ph), although I  
10   was going to have him testify mostly about land  
11   acquisition costs.   And since that's not going to be  
12   necessary, his testimony is going to be rather  
13   abbreviated.   But I think I may ask him just a  
14   question or two, Your Honor

15              JUDGE DUGGAN:   Okay.   Well, Mr. Bowen and  
16   Mr. Schaller, raise your right hand.

17                               (Whereupon the witnesses were  
18                               duly sworn by Judge Duggan.)

19              JUDGE DUGGAN:   Thank you.   Sometimes you want  
20   to speak up.   We do have a court reporter here that's  
21   taking down every word that's said in the room, so  
22   she needs to keep track of who is making these

1 statements. We need to be able to understand what  
2 was said, so we try to speak in complete words,  
3 complete sentences, try not to interrupt each other,  
4 and most people should not speak unless they have  
5 been asked a direct question by an attorney or  
6 Mr. Toliver. You may be the person who knows the  
7 answer to a question I am asking but, unfortunately,  
8 we don't want you answering that until we have gone  
9 through the indirect route with the attorneys, so we  
10 can kind of keep some order involved here.

11 Where were we? Okay.

12 The first thing is, Mr. Streicher, it  
13 is my understanding that today you are going to make  
14 a representation regarding the number of trains  
15 currently using the subject crossing and that we  
16 would then ask if the other parties will be  
17 stipulating to that as what would be testified into  
18 evidence if we had a witness here to testify to that.

19 So can you tell what us that  
20 representation is regarding the trains at this  
21 crossing?

22 MR. STREICHER: Yes, sir . The CSX record data

1     base reflects that there are four freights trains per  
2     day at a maximum timetable speed of 40 miles per  
3     hour. There are no passenger trains.

4             JUDGE DUGGAN: Okay. And do you anticipate  
5     that there will be more trains in the foreseeable  
6     future?

7             MR. STREICHER: Yes. As the business climate  
8     improves, we believe that that number will increase.

9             JUDGE DUGGAN: Okay. So I will ask Mr. Long,  
10    Mr. Toliver and Ms. Kuntz if you stipulate that, if  
11    Mr. Streicher had brought a qualified witness from  
12    CSX here today to testify, that he would have  
13    testified accordingly.

14                     Mr. Long, do you stipulate to that?

15             MR. LONG: Yes. On behalf of the petitioner I  
16    do stipulate to that, Your Honor.

17             JUDGE DUGGAN: And Ms. Kuntz?

18             MS. KUNTZ: Yes, Your Honor, I stipulate also.

19             JUDGE DUGGAN: And Mr. Toliver?

20             MR. TOLIVER: Yes, Your Honor.

21             JUDGE DUGGAN: Now, Mr. Streicher, the last  
22    time you had received cost numbers that you were not

1 previously aware of and they were being offered into  
2 evidence as Exhibit B and then the contributions by  
3 all parties, including CSX, were listed in Table F.  
4 I ask if you can represent on behalf of CSX today  
5 that in fact CSX is agreeing to the contributions as  
6 set out in proposed Exhibit F.

7 MR. STREICHER: Yes, CSX agrees to its cost  
8 contribution.

9 JUDGE DUGGAN: Okay. And Exhibits B and F have  
10 briefly been moved into evidence, and I will ask if  
11 CSX --and CSX wanted to reserve the right to cross  
12 examination. Do you want to cross-examine on those  
13 exhibits?

14 MR. STREICHER: No, we will withdraw our  
15 request for cross examination.

16 JUDGE DUGGAN: Okay. Then I will ask are there  
17 any objections to the admission into evidence of  
18 Exhibits B and F.

19 Mr. Streicher?

20 MR. STREICHER: No objection.

21 JUDGE DUGGAN: Ms. Kuntz?

22 MS. KUNTZ: No objection.

1 JUDGE DUGGAN: Mr. Toliver?

2 MR. TOLIVER: No objection, Your Honor.

3 JUDGE DUGGAN: All right. Then B and F are  
4 admitted into evidence.

5 (Whereupon Exhibits B and F were  
6 admitted into evidence.)

7 JUDGE DUGGAN: Let's go off the record a  
8 second.

9 (Whereupon there was then had an  
10 off-the-record discussion.)

11 JUDGE DUGGAN: Back on the record.

12 Okay. I am first of all showing  
13 Mr. Long a copy of the document marked Exhibit F and  
14 ask if that is a true and correct copy of what  
15 Mr. Dennis Sullivan testified to as Exhibit F at the  
16 last hearing.

17 MR.LONG: Yes, it is, Your Honor.

18 JUDGE DUGGAN: Mr. Toliver, would you  
19 stipulate?

20 MR. TOLIVER: Yes, Your Honor.

21 JUDGE DUGGAN: Ms. Kuntz, do you stipulate  
22 accordingly?

1 MS. KUNTZ: Yes, Your Honor.

2 JUDGE DUGGAN: Let's go off the record.

3 (Whereupon there was then had an  
4 off-the-record discussion.)

5 JUDGE DUGGAN: Back on the record.

6 So, Mr. Streicher, can you stipulate  
7 that the document I just showed you on the video  
8 camera is the true and correct copy of the document  
9 that Mr. Sullivan testified to as Exhibit F?

10 MR. STREICHER: We so stipulate.

11 JUDGE DUGGAN: Okay. Then, Mr. Long, do you  
12 want to offer this Exhibit F into evidence?

13 MR. LONG: Yes, I will move that the Exhibit F  
14 be admitted into evidence, Your Honor.

15 JUDGE DUGGAN: Okay. Any objections to Exhibit  
16 F, Mr. Streicher?

17 MR. STREICHER: No objection.

18 JUDGE DUGGAN: Ms. Kuntz?

19 MS. KUNTZ: No objection.

20 JUDGE DUGGAN: Mr. Toliver?

21 MR. TOLIVER: No objection.

22 JUDGE DUGGAN: Okay. Exhibit F is admitted

1       into evidence.

2                       Exhibit B is admitted into evidence.

3       There it is.

4                       Mr. Long previously moved for the  
5       admission of Exhibit 10. I believe IDOT objected.  
6       Is IDOT still objecting to admission of Exhibit 10 or  
7       do you want to hear testimony on it?

8               MS. KUNTZ: Wait until the testimony, if we  
9       could, Your Honor.

10               JUDGE DUGGAN: Okay, very good. And, Mr. Long,  
11       -- I'm sorry, Mr. Long, do you want to update us on  
12       the status of the agreement between CSX and the City  
13       of O'Fallon?

14               MR. LONG: Yes. The resolution for approving  
15       the final construction agreement was on the agenda  
16       for the city council meeting last night, and I  
17       checked this morning; it was passed last night. I do  
18       not have a certified signed copy of the resolution.  
19       I should be able to get a signed copy of the  
20       resolution tomorrow sometime and I will immediately  
21       scan it in and mail a copy of that to Mr. Paul  
22       Streicher.

1 JUDGE DUGGAN: And simply because we are making  
2 a representation of that in the Draft Order, I will  
3 ask once again that, if Mr. Long had a qualified or  
4 competent witness to testify to the matters stated,  
5 would you stipulate that that in fact would be the  
6 testimony.

7 Mr. Streicher?

8 MR. STREICHER: We would so stipulate.

9 JUDGE DUGGAN: Ms. Kuntz?

10 MS. KUNTZ: Yes, Your Honor.

11 JUDGE DUGGAN: Mr. Toliver?

12 MR. TOLIVER: Yes, Your Honor.

13 JUDGE DUGGAN: Thank you. Okay. Why don't we  
14 call the IDOT witness and we will take care of that  
15 and those exhibits before we do a couple other  
16 things. So speak up from there.

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1 JOHN SCHALLER

2 called as a witness on behalf of Illinois Department  
3 of Transportation, having been first duly sworn, was  
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY JUDGE DUGGAN:

7 Q. So would you tell us your name, Mr.  
8 Schaller.

9 A. John Schaller, Local Roads Field Engineer.

10 Q. What type of engineer?

11 A. Local Roads Field Engineer.

12 Q. And spell your last name for the court  
13 reporter, please.

14 A. S-C-H-A-L-L-E-R.

15 JUDGE DUGGAN: Okay. Do you want to examine  
16 him, Ms. Kuntz?

17 MS. KUNTS: It's okay.

18 BY JUDGE DUGGAN: Okay.

19 Q. And what is your role in relation to the  
20 present project?

21 A. I am a project manager and administrator  
22 for local agency projects, coordinating plan review

1 and other aspects of the project.

2 Q. Okay. Were you responsible for reviewing  
3 these plans for this project?

4 A. For coordinating the review with other  
5 parties and final approval of the yard cutoff.

6 Q. Okay. And in that role are you aware of  
7 the status of the plan review process for this  
8 project?

9 A. Yes, Your Honor.

10 Q. And for the bridge portion of the project  
11 can you tell us the status of that review process?

12 A. Those preliminary plans have been reviewed  
13 by the bridge office and given approval to move  
14 forward with the final plan phase which is the  
15 incorporation of those plans into the roadway plans  
16 themselves.

17 Q. And does that mean that IDOT is not going  
18 to require any design or roadway geometric design  
19 changes?

20 A. Yeah, at this time we don't anticipate any  
21 future bridge or geometry design changes.

22 Q. So it is not final, but you don't

1 anticipate any changes?

2 A. Yes.

3 JUDGE DUGGAN: Okay. Mr. Long, any questions?

4 MR. LONG: Well, I was going to ask him the  
5 same questions with respect to the roadway plans,  
6 Your Honor, as of September 11.

7 JUDGE DUGGAN: Okay. Go ahead.

8 CROSS EXAMINATION

9 BY MR. LONG:

10 Q. Mr. Schaller, have you had a chance also to  
11 look at the seven sheets of roadway plans that the  
12 City of O'Fallon submitted for this project?

13 A. Was that relating to the intersection  
14 design study?

15 Q. That's on Venita Drive and also relocated  
16 Taylor Drive up on the north end of the project.

17 A. As far as their submittals relating to  
18 preliminary bridge plans, yes, I have seen those.

19 Q. And does IDOT have any objections to the  
20 roadway plans that have been submitted to it for this  
21 project?

22 A. No, there are no objections of geometry

1     whatsoever.

2             Q.     And I assume that you are not -- IDOT is  
3     not anticipating requiring any changes in the plans  
4     for either Venita Drive or the relocated Taylor Road?

5             A.     Not that I am aware of at this time.

6             MR. LONG:   That's all, Your Honor.

7             JUDGE DUGGAN:   Okay. Let's go off the record.

8                             (Whereupon there was then had an  
9                             off-the-record discussion.)

10            JUDGE DUGGAN:   Back on the record.

11                             RE-DIRECT EXAMINATION

12            BY JUDGE DUGGAN:

13            Q.     Now, Mr. Schaller, is it true that the  
14     existing Taylor Road is on an IDOT right-of-way?

15            A.     Yes, Your Honor.

16            Q.     Okay.   And is IDOT agreeing to transfer  
17     that right-of-way to the City of O'Fallon?

18            A.     Yes, Your Honor.

19            Q.     And how long do you anticipate that process  
20     to take?

21            A.     I would say, from the information I have  
22     been given, it should take 90 days.

1 Q. From today?

2 A. From today, yes.

3 JUDGE DUGGAN: Back off the record.

4 (Whereupon there was then had an  
5 off-the-record discussion.)

6 BY JUDGE DUGGAN: Go back on the record.

7 Q. Have you been informed, Mr. Schaller, that  
8 the City intends to construct a fence and a gate?

9 A. Yes, Your Honor.

10 Q. Okay. A fence and a locking gate on that  
11 right-of-way?

12 A. Yes, Your Honor.

13 Q. Okay. And does IDOT have any objection to  
14 construction of that fence and locking gate on  
15 existing Taylor Road right-of-way?

16 A. No, there is no objection.

17 JUDGE DUGGAN: Okay, thank you. Then that's  
18 all I have for Mr. Schaller. Mr. Long, did you have  
19 anything else?

20 MR. LONG: I do not, Your Honor.

21 JUDGE DUGGAN: Okay. Ms. Kuntz?

22 MS. KUNTZ: No, Your Honor.

1 JUDGE DUGGAN: Mr. Toliver?

2 CROSS EXAMINATION

3 BY MR. TOLIVER:

4 Q. I guess I would ask, and you may or may not  
5 be the one to ask, but you said it is IDOT's  
6 right-of-way. But to your knowledge is it IDOT's  
7 roadway jurisdiction to maintain?

8 A. No. To my knowledge and our roadway data  
9 base, it is shown as being a City roadway at this  
10 time, so a City jurisdiction roadway on IDOT  
11 right-of-way.

12 Q. Okay. So it is a City-owned street,  
13 City-maintained street, on property owned by IDOT?

14 A. Yes.

15 MR. TOLIVER: Okay. I have nothing else, Your  
16 Honor.

17 JUDGE DUGGAN: Okay. If nobody has anything  
18 else of Mr. Schaller, then as far as I know  
19 Mr. Rujawitz would be testifying to the fence and  
20 gate. Would he be testifying to anything else?

21 MR. LONG: I was going to ask him to explain  
22 just exactly how these stations are to be

1     interpreted, Your Honor.

2             JUDGE DUGGAN:  Oh, he is going to do that also.  
3     Okay.  Well, if you would ask him about the fence and  
4     gate as indicated in our draft, then that would be  
5     great, too.

6             MR. LONG:  Then we will call Mr. Mark Rujawitz  
7     as a witness.

8             JUDGE DUGGAN:  And again he has previously been  
9     here but it is R-U-J-A-W-I-T-Z, correct?

10            JUDGE DUGGAN:  That's correct.

11                             MARK RUJAWITZ

12     called as a witness on behalf of Petitioner, having  
13     been first duly sworn, was examined and testified as  
14     follows:

15                             DIRECT EXAMINATION

16             BY MR. LONG:

17             Q.  Mr. Rujawitz, I wanted to -- well, I am  
18     going to hand you a copy.  This is not the original.  
19     This is a copy of Petitioner's Exhibit Number 11  
20     which are the roadway.

21             MR. DUGGAN:  I have got that, actually, if you  
22     want to have him testify to that.

1           Q.    And would you look at the, I believe it is,  
2   the fourth page for the Venita Drive?

3           JUDGE DUGGAN:   Once again, Venita is  
4   V-E-N-I-T-A, right?

5           Q.    Yes.   Have I got the right one there?

6           A.    This one doesn't show the sign.   That one  
7   does.

8           Q.    That one does.   That's one of the  
9   corrections I wanted to make, Your Honor.   Mark, why  
10   don't you testify as to why we changed that sheet to  
11   make a correction in response to an observation that  
12   Aaron Toliver had made?

13          A.    Oh, the sheet that was previously submitted  
14   as an exhibit had the fence and the gate, but it did  
15   not have a "road closed" sign on the exhibit, whereas  
16   this exhibit, the revised edition here, shows a "road  
17   closed" sign to be installed on that fence.

18          JUDGE DUGGAN:   And what page of the exhibit is  
19   it?

20          A.    That would be the fifth sheet of Exhibit  
21   11, the fifth sheet of Exhibit 11.

22          Q.    And, Mark, would you explain what, just

1     briefly, what the fence and the locked gate are there  
2     for? I mean, what's the purpose of those things?

3             A. It is just to limit access to that roadway.  
4     We only want to use that for heavy maintenance  
5     equipment to go underneath the bridge and to access  
6     the park. The purpose of the fence and gate is to  
7     not allow anybody else to use that, whether it is any  
8     other type of vehicle or anybody else trying to  
9     access that, get underneath that bridge area.

10            Q. So who will be the only party that will be  
11     allowed to use the existing roadway surface of Taylor  
12     Road after this fence and gate are put in place?

13            A. That would be the City of O'Fallon. I am  
14     assuming that would be their maintenance or their  
15     park, the parks department, either one.

16            Q. Is this essentially the part of the  
17     roadway, the existing Taylor Road, that will be below  
18     the bridge that is constructed there?

19            A. Yes, yes.

20            Q. I also need to ask you, Mark, about -- I am  
21     going to hand you a copy of Petitioner's Exhibit  
22     Number 13 which has various stations listed on there.

1 First of all, do the station numbers appear to be  
2 correct? They were taken from the plans.

3 A. Yeah, those are correct.

4 Q. And you prepared the roadway plans?

5 A. Yes.

6 Q. Would you explain what a station number  
7 means, first of all? How do you --

8 A. Well, a station number itself can be  
9 randomly assigned. It could be a part of, you know,  
10 previous history for that roadway itself. But in  
11 these cases these are randomly assigned stations --  
12 station at a 100 foot increment.

13 Q. All right. Now, so when you say it is 100  
14 foot increment, what do you mean by that exactly?

15 A. Basically, station 100 plus 00 to 101 plus  
16 00 would be 100 feet.

17 Q. All right. Now, can you see where the  
18 beginning station for this project is indicated down  
19 toward the bottom of this Exhibit 13?

20 A. Yes, I do.

21 Q. And what was that beginning station number?

22 A. That's station 100 plus 00.

1           Q.    Okay.  Now, that's actually down there on  
2   Highway 50.

3           A.    Oh, you want the station for this project?  
4   103 plus 60.

5           Q.    Now, do you see where the station number  
6   that indicates where the project ends on the north?

7           A.    118 plus 85.

8           Q.    All right.  Now, would you explain for the  
9   agency what the distance between those two stations  
10   is and how you calculate it?

11          A.    Well, it would basically take the  
12   differences of 15 plus 25 as far as stations which  
13   would be 1,525 feet.

14          Q.    How did you get the 15?  I mean, are you  
15   subtracting -- it appears that you subtracted the 103  
16   from 118?

17          A.    Yes, that's correct.

18          Q.    And the same on the other part of that  
19   number; you subtracted the 60 from the 85?

20          A.    Uh-huh, yes.

21          Q.    So, again, that's 1500 feet from the first  
22   calculation and then 25 feet from the other, is that

1 correct?

2 A. That is correct.

3 MR. LONG: All right. Those are all the  
4 questions I have for Mr. Rugawitz, Your Honor.

5 JUDGE DUGGAN: Okay. Mr. Streicher, any  
6 questions?

7 MR. STREICHER: No questions.

8 JUDGE DUGGAN: Ms. Kuntz?

9 MS. KUNTZ: No questions.

10 JUDGE DUGGAN: Mr. Toliver?

11 MR. TOLIVER: No questions, Your Honor.

12 JUDGE DUGGAN: Are you wanting to substitute  
13 this page 5?

14 MR. LONG: Yes, I am. It would be as an  
15 amended page 5.

16 JUDGE DUGGAN: Well, it's not been admitted so  
17 you can just change the pages out and the -- off the  
18 record.

19 (Whereupon there was then had an  
20 off-the-record discussion.)

21 JUDGE DUGGAN: Back on the record.

22 Okay. So the City has requested that

1 the previously identified Exhibit 11 be modified and  
2 that page 4 be replaced with the page 4 that  
3 Mr. Rujawitz just testified to, and the difference  
4 being that at the top about the right quarter is a  
5 box that says "road closed" in it. Are there any  
6 other differences?

7 MR. LONG: That's the only difference, Your  
8 Honor.

9 JUDGE DUGGAN: Okay. And that -- would  
10 Mr. Rujawitz be the witness this was on? Is this the  
11 document that was filed on e-Docket?

12 MR. LONG: We have a smaller version. You are  
13 talking about the eleven-sheet set of plans that we  
14 had, Aaron?

15 JUDGE DUGGAN: Okay.

16 MR. LONG: Yeah, it was. It was, Your Honor.

17 JUDGE DUGGAN: Mr. Toliver, can you verify that  
18 this is a true and correct copy of the documents  
19 filed on e-docket?

20 MR. TOLIVER: Yes, I can, Your Honor. In  
21 e-Docket it was filed with the amended petition as  
22 Exhibit A and it was -- the "road closed" sign

1 appears on page 4 of Exhibit A as filed in e-Docket.

2 JUDGE DUGGAN: Okay. So Exhibit 11 is  
3 identical to what was filed as Exhibit A to the  
4 petition on e-Docket; is that what you are telling  
5 me?

6 MR. LONG: No, Your Honor.

7 JUDGE DUGGAN: Let's go off the record.

8 (Whereupon there was then had an  
9 off-the-record discussion.)

10 JUDGE DUGGAN: Back on the record.

11 We have clarified that there was no  
12 prefiled Exhibit 11. However, this particular page,  
13 this revised page 4 of the proposed Exhibit 11, was  
14 filed as part of an exhibit attached to the original  
15 petition on e-Docket. But with this revision and  
16 with the IDOT testimony, I am going to ask again if  
17 there is any objection to admission of Exhibit Number  
18 11.

19 Ms. Kuntz?

20 MS. KUNTZ: No, Your Honor.

21 JUDGE DUGGAN: Mr. Toliver?

22 MR. TOLIVER: No, Your Honor.

1 JUDGE DUGGAN: And Mr. Streicher?

2 MR. STREICHER: No objection.

3 JUDGE DUGGAN: Okay, very good. Also Exhibit

4 10, is there going to be any additional testimony

5 regarding Exhibit 10?

6 MR. LONG: No, no additional testimony, Your

7 Honor.

8 JUDGE DUGGAN: Okay. Then I will ask -- this

9 has previously been moved into evidence. I will ask

10 if there is any objection to the admission of Exhibit

11 10.

12 Ms. Kuntz?

13 MS. KUNTZ: No, Your Honor.

14 JUDGE DUGGAN: Mr. Toliver?

15 MR. TOLIVER: No, Your Honor.

16 JUDGE DUGGAN: Mr. Streicher?

17 MR. STREICHER: No objection.

18 JUDGE DUGGAN: Okay. Then Exhibits 10 and 11

19 are admitted into evidence.

20 (Whereupon Exhibits 10 and 11

21 were admitted into evidence.)

22 JUDGE DUGGAN: Who was the witness for Exhibits

1 10 and 11?

2 MR. LONG: Mr. Bill Lueking was the witness for  
3 Exhibit 10. He designed the bridge. And Mr. Mark  
4 Rujawitz, who is here with us today, was the witness  
5 for Exhibit 11.

6 JUDGE DUGGAN: And Lueking is L-U-E-K-I-N-G?

7 MR. LONG: Yes.

8 JUDGE DUGGAN: I think the only thing we have  
9 left is regarding the stipulation. Does anybody else  
10 know of anything else that we need to be doing other  
11 than the stipulation?

12 MR. TOLIVER: The minor detail of the 1638 feet  
13 versus the 1618 feet.

14 JUDGE DUGGAN: Okay. And that was again  
15 Mr. Rujawitz?

16 MR. TOLIVER: Yes.

17 JUDGE DUGGAN: Do you want to ask clarifying  
18 questions on that?

19 MR. TOLIVER: Sure.

20 CROSS EXAMINATION

21 BY MR. TOLIVER:

22 Q. Mr. Rujawitz, at our last hearing I believe

1     you testified that the length of the relocated Taylor  
2     Road was approximately 1638 feet.   However, on  
3     Exhibit B for the cost estimate for the relocated  
4     Taylor Road, it indicates the net length of that  
5     project to be 1618 feet for the Taylor -- relocated  
6     Taylor Road portion.   Can you, I guess, explain the  
7     20 feet difference in the two calculations?

8             A.    I am sure the length of the original 1638  
9     feet was from a center point, center of the lane  
10    point, to a center of the lane point on Venita Drive,  
11    whereas the actual length of new pavement would be  
12    1618 feet.

13            Q.    Okay.   So the net length of the project as  
14    shown on Exhibit B is accurate?

15            A.    Yes.

16            Q.    That would be what the Grade Crossing  
17    Protection Fund was incurring costs to construct,  
18    1618 feet of pavement?

19            A.    That is correct.

20            MR. TOLIVER:   Okay.   No further questions, Your  
21    Honor.

22            JUDGE DUGGAN:   All right.   Very good.   Now, I

1     have in front of me a document written "Stipulation  
2     of Facts" on it and we discussed this off the record.  
3     I marked this as Exhibit 13.

4             MR. LONG:   It should be -- I thought that was  
5     17, Your Honor.

6             JUDGE DUGGAN:  You are correct.  You are  
7     correct.  It should be Exhibit 17.  Thank you very  
8     much.

9                     And ask if you are all familiar with  
10    that document.

11                    Ms. Kuntz?

12             MS. KUNTZ:  Yes, I am, Your Honor.

13             JUDGE DUGGAN:  Mr. Toliver?

14             MR. TOLIVER:  Yes, Your Honor.

15             JUDGE DUGGAN:  Mr. Long?

16             MR. LONG:  Yes, Your Honor.

17             JUDGE DUGGAN:  Mr. Streicher?

18             MR. STREICHER:  Yes, sir.

19             JUDGE DUGGAN:  So then I will ask each of you  
20    if you can stipulate to the facts, the factual  
21    representations, made therein such that such facts  
22    will be on the record as evidence.

1                   Ms. Kuntz?

2           MS. KUNTZ:  Yes, Your Honor.

3           JUDGE DUGGAN:  Mr. Toliver?

4           MR. TOLIVER:  Yes, Your Honor.

5           JUDGE DUGGAN:  Mr. Long?

6           MR. LONG:  Yes, sir, Your Honor.

7           JUDGE DUGGAN:  Mr. Streicher?

8           MR. STREICHER:  Yes, Your Honor.

9           JUDGE DUGGAN:  Thank you.  Very good.  Then I

10   am moving that stipulation of facts, Exhibit 17, be

11   moved into evidence.

12                   Any objection, Ms. Kuntz?

13           MS. KUNTZ:  No, Your Honor.

14           JUDGE DUGGAN:  Mr. Toliver?

15           MR. TOLIVER:  No, Your Honor.

16           JUDGE DUGGAN:  Mr. Long?

17           MR. LONG:  No objection, Your Honor.

18           JUDGE DUGGAN:  Mr. Streicher?

19           MR. STREICHER:  No objection.

20           JUDGE DUGGAN:  Then Exhibit 17 is admitted into

21   evidence.

22                   (Whereupon Exhibit 17 was

1 admitted into evidence.)

2 JUDGE DUGGAN: Anything else? Mr. Long?

3 MR. LONG: Well, just to make sure that our  
4 exhibits have been admitted, I think I did this last  
5 time, but I would like to move for the admission of  
6 the exhibits that we have previously offered to the  
7 court and I think that's A through F, 1 through 5 and  
8 10 through 16. Now, 6, 7, 8 and 9 we never actually  
9 offered and I think the stipulation covers it. Those  
10 exhibits deal with the land acquisition costs. So  
11 they are not part of the record. But I will move  
12 again that the exhibits that we have offered be  
13 admitted into evidence.

14 JUDGE DUGGAN: Okay. Well, I believe they all  
15 were, but if we want to cover this again, we will see  
16 if anybody has any problem with it. So regarding the  
17 City Exhibits A through F and City Exhibits 1 through  
18 5 and City Exhibits 10 through 16, is there any  
19 objection to the admission of those exhibits into  
20 evidence?

21 Ms. Kuntz?

22 MS. KUNTZ: No, Your Honor.

1 JUDGE DUGGAN: Mr. Toliver?

2 MR. TOLIVER: No, Your Honor.

3 JUDGE DUGGAN: Mr. Streicher?

4 MR. STREICHER: No objection.

5 JUDGE DUGGAN: So to the extent they weren't  
6 previously admitted, they are now admitted. The  
7 record is marked heard and taken.

8 HEARD AND TAKEN

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